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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/526,722

09/02/2005

Andrew Robert Davids

SER-102

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EXAMINER

KIM, ALEXANDER D

ART UNIT

PAPER NUMBER

1656

MAIL DATE

DELIVERY MODE

03/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|----------------------------------------------------------------------------------------------|----------------------------------------------|----------------------------------------------|--|
| <p align="center">Advisory Action Before the Filing of an Appeal Brief</p> | <p>Application No. 10/526,722</p> | <p>Applicant(s) DAVIDS ET AL.</p> | |
| | <p>Examiner ALEXANDER D. KIM</p> | <p>Art Unit 1656</p> | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☒ Newly proposed or amended claim(s) 64,65,71 and 72 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 64,65,71 and 72.

Claim(s) rejected: 63, 66-70 and 73-78.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Richard G Hutson, Ph.D./
Primary Examiner, Art Unit 1652

Continuation of 3. NOTE: Applicant's proposed amendments after final rejection, filed on 02/29/2008, is acknowledged. In the claims of the amendment filed on 02/29/2008, claim 63 is drawn to an isolated polypeptide comprising an amino acid sequence, said amino acid sequence having at least 95% identity to the full length of SEQ ID NO: 100. An isolated polypeptide according to the proposed amendment encompasses any protein, wherein a combination of at least one or more part(s) or fragment(s) of said protein have 95% identity to SEQ ID NO: 100, for example. Thus, a full length of the claimed isolated protein does not require to have 95% identity to SEQ ID NO: 100, as long as the protein is large enough to have many fragments that pairs up with 95% of amino acids of SEQ ID NO: 100. The amended claims with a limitation, i.e., "to the full length of SEQ ID NO: 100", appears to overcome instant rejection under 35 USC 102(b) if the amendment was entered and it would require further consideration and/or new search, and would be rejected under 35 U.S.C. 112, first paragraph.

Continuation of 11. does NOT place the application in condition for allowance because: The request for reconsideration in the reply filed on 02/29/2008 has been considered, however, the amendment does not place the application in condition for allowance. The amendment to the claims filed on 02/29/2008 has not been entered because the claims as amended raise new issues requiring further consideration as noted above. See MPEP § 714.13. However, in view of the non-entry of the amendment, applicant's arguments are not found persuasive to overcome the outstanding 35 U. S. C. 102(b), and 112, first paragraph rejection(s) as set forth in the Office action mailed on 11/29/2007 for the reasons of record stated therein.